

The Season of Giving Could Lead to a Court Martial

Most gift giving frowned upon and punishable in the military.

The exchange of gifts is a favorite holiday tradition for many. A less popular and less known holiday tradition, however, involves the punishment of service members who stray from military rules by giving their superiors a Christmas or Hanukkah gift. This holiday season, service members who attempt to give official superiors even moderately priced gifts could be charged with disobeying a lawful regulation in violation of Article 92 of the Uniform Code of Military Justice and face court martial.

For military personnel, giving during the Christmas and Hanukkah season is considered “occasional basis” giving. Subordinates are allowed to occasionally give gifts with a market value up to \$10 to an official superior. Subordinates are also allowed to give superiors food or drinks that are offered to other personnel or personal hospitality, such as an inexpensive bottle of wine offered at their home. These giving limits often paint the military with Grinch like holiday cheer, but these policies are in place to protect subordinates against favoritism.

“The military is very strict about these policies. The reasoning is it prevents someone from buying a really lavish gift for their superior in return for more favorable evaluations, orders and overall treatment,” said Lisa M. Windsor a retired Army colonel and JAG Attorney who is of counsel to Tully Rinckey PLLC.

The strict giving restrictions do not apply on gifts given by superiors to subordinates but it should be recognized that all Department of Defense employees cannot accept or seek “anything of value to influence any official act.” The giving rules for the military can be found in the Joint Ethics Regulation (JER, DODD 5500.7-R). Federal employees are in the same boat as service members when it comes to gift giving. The JER transfers much of the same language on gift giving restrictions from the Code of Federal Regulation (C.F.R. Parts 2635.201-2635.304)

“The message is beware even of your best intentions. The best gift any superior can receive is a model subordinate that obeys orders and can be counted on,” said Ms. Windsor

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